

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ASENCION VELA, §
§
Plaintiff, §
VS. § CIVIL ACTION NO. 2:13-CV-00004
§
CRAIG A. PINNEY, *et al*, §
§
Defendants. §

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION
TO DISMISS CERTAIN CLAIMS AND TO RETAIN CASE**

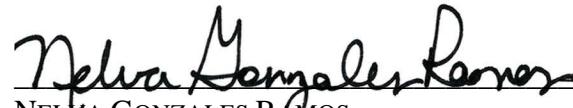
On April 3, 2013, United States Magistrate Judge B. Janice Ellington issued her “Memorandum and Recommendation to Dismiss Certain Claims and to Retain Case” (D.E. 16). The Plaintiff was provided proper notice of, and opportunity to object to, the Magistrate Judge’s Memorandum and Recommendation. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); General Order No. 2002-13. No objections have been filed.

When no timely objection to a magistrate judge’s memorandum and recommendation is filed, the district court need only satisfy itself that there is no clear error on the face of the record and accept the magistrate judge’s memorandum and recommendation. *Guillory v. PPG Industries, Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Services Auto Ass’n*, 79 F.3d 1415, 1420 (5th Cir. 1996)).

Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge’s Memorandum and Recommendation (D.E. 16), and all other relevant documents in the record, and finding no clear error, the Court **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, the Court **ORDERS**

1. The Plaintiff's claims for monetary damages against Defendants in their official capacities are **DISMISSED** as barred by the Eleventh Amendment;
2. The Plaintiff's excessive force claims against Officer Pinney and Sergeant Trevino in their individual capacities are **RETAINED** and the Court **ORDERS** service on these Defendants; and
3. The Plaintiff's claims for failure to protect and failure to follow procedures against the remaining Defendants are **DISMISSED** for failure to state a claim upon which relief may be granted and/or as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

ORDERED this 9th day of May, 2013.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE